



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP/167237

PRELIMINARY RECITALS

Pursuant to a petition filed July 14, 2015, under Wis. Admin. Code § HA 3.03(4), to review a decision by the Kenosha County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on August 06, 2015, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner's appeal is timely as to a January 1, 2015 FoodShare case closure for failing to meet Able Bodied Adult without Dependents (ABAWD) work requirements and whether Petitioner's current application For FoodShare was correctly denied.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Karen Mayer
Kenosha County

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner applied for FoodShare in August 2014. That application was approved. Petitioner was given an opportunity to submit proof of exemption from ABAWD requirements. She did not submit proof of exemption and was assigned to the FSET program.

3. Petitioner did not participate in FSET required activities and her FoodShare was discontinued effective January 1, 2015. By that point she had used 3 months of her time limited FoodShare benefits. She was sent a Notice of Decision dated December 19, 2014 that informed her of the discontinuance. It notes an appeal deadline of April 2, 2015.
4. Petitioner reapplied for FoodShare in June 2015. She was approved for expedited FoodShare and FoodShare benefits were issued. The agency realized that was an error and expects to recover the issuance; the application was denied and Petitioner sent June 23, 2015 Notice of Decision dated June 23, 2015 that informed her of the denial. The reason for the denial is that Petitioner has used 3 months of ABAWD benefits.
5. Petitioner has had a hip replacement in 2013 and an auto accident subsequent to the hip surgery but has not submitted medical documentation showing that she is exempt from FoodShare ABAWD requirements.
6. Petitioner filed this appeal on July 14, 2015.

DISCUSSION

The Division of Hearings and Appeals can only make a decision on the merits of a matter if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FoodShare must be filed within 90 days of the date of that action. 7 CFR, §273.15(g). This is not a timely request for the January 1, 2015 case closure but is timely for the denial of Petitioner's June 2015 FoodShare application.

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FoodShare benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement.

6.3.2 Non-Exempt ABAWD Participation Requirements

Non-exempt ABAWDs who do not meet the ABAWD work requirement will only be allowed to receive up to three full months of FoodShare (FS) benefits in a 36-month time period. ABAWDs subject to time-limited benefits (TLB) may choose to meet the work requirement by participating in FSET.

As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat., §49.79(10), which mandated FoodShare eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24. Under Wis. Stat., §49.79(10), an ABAWD is required to fulfill a work requirement. If s/he does not fulfill the work requirement, s/he is limited to receiving no more than three months' FoodShare during a three year period. The requirements are stated in the *FSET Handbook*, as follows:

6.3.2.1 Definition of Working for ABAWDs

For ABAWDs, working is defined as one of the following:

- Work in exchange for money;
- Work in exchange for goods or services (in-kind);
- Unpaid work (e.g. volunteer work, community service);
- Self-employment; or

- Any combination of the above.

6.3.2.2 ABAWD Work Requirement

An ABAWD is considered to be meeting the ABAWD work requirement if one of the following applies:

- Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
- Participating in and complying with the requirements of an allowable work program at least 80 hours per month; or
- Both working and participating in an allowable work program for a combined total of at least 80 hours per month.
- Participating in and complying with the requirements of a workfare program.

FSET Handbook, §§ 6.3.2.1 & 6.3.2.2; and see *FoodShare Wisconsin Handbook* at §3.17.1.

To meet the work requirement the ABAWD must work a minimum of 80 hours per month; participate in a work program 80 hours per month, or a combination of both for 80 hours per month. *FoodShare Wisconsin Handbook*, §3.17.1.7. The person is limited to three months of FoodShare eligibility in which s/he is not meeting the 80-hour requirement and is not exempt. *Ibid.*, §3.17.1.9. FoodShare ends after three months of failing to meet the work requirement, but eligibility can begin again if the person becomes exempt or meets the work requirement for a 30-day period (the person could reapply for FS *after* meeting the requirement for 30 days). *Ibid.*, §3.17.1.11. Among other reasons, a person can be exempt from the program if s/he is unfit for employment, that is, s/he is unable to work as evidenced by a statement by a health care professional or social worker. *FoodShare Wisconsin Handbook*, §3.17.1.5.

Petitioner did not meet the work requirement in late 2014 and her FoodShare case closed. She did not appeal that discontinuance. She indicated that she was incarcerated for 8 months but nothing in law or policy permits expansion of the appeal time limit.

As for a claim of exemption as of June 2015 – Petitioner submitted an invoice from a rehabilitation provider showing physical therapy services were provided during January and February 2014. This does not demonstrate an exemption from ADAWD requirements. Thus the agency correctly denied Petitioner's June 2015 FoodShare application; she has used her 3 months of time limited benefits, is not exempt and has not met requirements necessary to regain FoodShare eligibility. For Petitioner's benefit, the *FoodShare Wisconsin Handbook* provides for *regaining* FoodShare eligibility as follows:

3.17.1.11 Regaining Eligibility after Exhausting 3 Months of Time-Limited Benefits

There is no limit on how many times an ABAWD may regain eligibility after exhausting three months of TLBs. A new application is required if the ABAWD re-requests FS as an assistance group of one. If an ABAWD is requesting FS on an ongoing case, follow the person add policy to re-establish FS eligibility (6.1.3.3). ABAWDs who have exhausted three months of TLBs during a 36-month period may regain eligibility by:

1. Meeting the ABAWD work requirement for at least 30 consecutive days prior to the new FS filing date and currently meeting the work requirement, OR verifying that the work requirement will be met within 30 days of the new filing date. The work requirement can be met by:
 - Working a minimum of 80 hours in the 30-day period;

- Participating in and complying with requirements of an allowable work program, such as Workforce Investment Act (WIA) or a Trade Adjustment Assistance Act program, for at least 80 hours in the 30-day period. FS eligibility is a required prerequisite to FSET enrollment, so an ABAWD cannot regain eligibility through FSET participation after FS closes. Keep in mind, this is only for Non-Exempt ABAWDs who have exhausted their 3 TLBs; or
 - A combination of work and participation in an allowable work program for a minimum of 80 hours in the 30-day period;
2. Currently meeting an ABAWD exemption at the time of the application and providing verification of the exemption; or
 3. The ABAWD's 36-month period expires.

CONCLUSIONS OF LAW

1. That Petitioner's appeal is untimely with respect to the January 1, 2015 discontinuance of her FoodShare.
2. That Petitioner is not currently eligible for FoodShare as she has used her three time-limited benefit months in a 36 month period and has not demonstrated that she is exempt from, or meets, ABAWD requirements.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

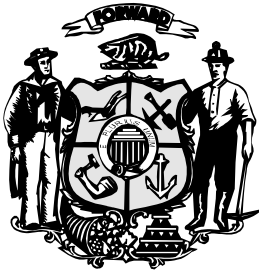
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of September, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 11, 2015.

Racine County Department of Human Services
Division of Health Care Access and Accountability